

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

TOBY G. GETTLER,

Respondent

v.

DIRECTOR OF REVENUE.

Appellant

DOCKET NUMBER WD75783

DATE: October 15, 2013

Appeal From:

ADMINISTRATIVE HEARING COMMISSION

Appellate Judges:

Division Four

James Edward Welsh, C.J., Alok Ahuja, J., and James P. Williams, Sp. J.

Attorneys:

James Layton, Jefferson City, MO

Counsel for Appellant

Attorneys:

Toby Gettler, St. Charles, MO

Respondent Acting Pro Se

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**TOBY G. GETTLER, Respondent, v.
DIRECTOR OF REVENUE, Appellant**

WD75783

Administrative Hearing Commission

Before Division Four Judges: Welsh, C.J., Ahuja, J., and Williams, Sp. J.

The Director of Revenue appeals the Administrative Hearing Commission's (AHC) determination that Toby G. Gettler's personalized license plate bearing the configuration "MZU SUX" is not subject to recall by the Director under section 301.144.3, RSMo Cum. Supp. 2012, or 12 CSR 10-23.185. The Director contends the AHC erred in rejecting the Director's decision to recall the license plate because section 301.144.3 and 12 CSR 10-23.185 authorize the Director to recall personalized license plates that are obscene and the use of the word "sux" has an undisputed sexual meaning and is obscene and offensive.

Affirmed

Division Four holds:

Determining whether or not the license plate configuration in this case was obscene was a question of fact. Because the AHC steps into the shoes of the Director and exercises the Director's discretion, determining whether Gettler's license plate was obscene was a factual issue for the AHC to decide. The AHC found that the license plate was not obscene. Competent and substantial evidence supported the AHC's determination that Gettler's license plate was not obscene to the average person applying contemporary community standards. Although another fact finder may have found otherwise, we will not substitute our judgment for that of the AHC on factual matters.

Opinion by James Edward Welsh, Chief Judge

October 15, 2013

* * * * *

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.